



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER EDUCATION ASSOCIATION, *
 NEA-NEW HAMPSHIRE *

Petitioner *

v. *

MANCHESTER BOARD OF SCHOOL COMMITTEE* *

Respondent *

CASE NOS. T-0365
 T-0365:1

DECISION NO. 85-65

APPEARANCES

Representing Manchester Education Association, NEA-N.H.

James Allmendinger, Esq., Staff Attorney
 Thomas Adams, UniServ Director, Region VI

Representing the Manchester Board of School Committee

Alan Hall, Esq., Counsel
 Robert Cassassa, Esq.

Also in attendance

Henry McLaughlin, Supt.	Wilbur L. Jenkins, Pers. Dir.
Owen Conway, Principal	Robert Duclos, Principal
John M. White, Principal	Diane Gaspar, Legal Intern, NEA-N.H.
Robert Baines, Principal	Richard Molan, Esq., SEA/SEIU
	Thomas Houghton, IAFF

BACKGROUND

On April 17, 1985, the Manchester Education Association (MEA) filed a petition for certification of a bargaining unit composed of: High School Principals, Assistant Principals; Elementary School Principals and Assistant Principals. This unit is composed of some thirty-one principals in the Manchester School System.

The Principals are currently covered in "Unit A" of a grandfathered bargaining unit in the city of Manchester School System. Teachers and others are in "Unit B". Both units are represented by MEA in negotiations with the Manchester Board of School Committee (Committee). The Committee filed exceptions to the petition as filed stating its objections to the granting of such petition. It argued that MEA is inappropriately the exclusive representative for both the supervisory and non-supervisory positions in the

same school system, violating RSA 273-A:8. However, the Committee agrees that MEA has properly filed a petition for modification of the existing unit seeking to create separate and distinct units which would comply with the statutory requirements. See In re Nashua Ass'n of School Principals 119 N.H. 90 (1979).

The Committee alleges that the MEA cannot represent both the supervisory and non-supervisory personnel at the same time and still carry out its duty of fair representation to all members with respect to collective bargaining and the settlement of grievances (RSA 273-A:5 (II) and 11 (I) (a)). Further, the Committee argues that should MEA represent both units on an individual but simultaneous and exclusive basis with respect to collective negotiations and the settlement of grievances, the resulting conflicting interest and division of loyalties would endanger the overall purpose of RSA 273-A which is to foster harmonious and cooperative relationships between the parties. In addition, the Committee argues that the full-time Elementary Assistant Principals are in fact part of the non-supervisory unit and should not be included with the supervisors.

In its objection to the Motion to Dismiss the petition for certification, MEA agrees that they currently represent the two units but denies that the representation is contrary to previous court decisions and simply agrees that 273-A and previous court decisions do require that the supervisory and non-supervisory personnel be in separate units. MEA denies that any conflict of interest would arise as their Executive Director is not a voting member of the bargaining committee and that his representation at grievance and arbitration hearings are almost exclusively handled at the Superintendent's level and not before the supervisory employees.

MEA further argues that the N.H. courts and PELRB have yet to define clearly the scope and nature of the duty of fair representation; or, in particular, whether the instant case raises issues under the duty of fair representation. In addition, they state that the N.H. Supreme Court implicitly upheld other associations' position that no law or rule prevents the same labor organization from representing both supervisory and non-supervisory employees.

At the time of the filing of the petition for certification of a new unit, the question arose as to whether or not PELRB was granting a modification of the existing unit composed of both supervisory and non-supervisory personnel, or whether PELRB was being asked to modify the certification (recognition under the grandfather clause) issued on June 22, 1977.

An initial hearing on the above matter was held in the Board's office, Concord, N.H. on June 20, 1985 with all parties represented. This hearing was continued on June 27.

HEARING OF JUNE 20, 1985

Arguments were heard from both parties reflecting their positions as stated above and PELRB's ruling on the question of the type of petition which was filed was guided by RSA 273-A:10, "Elections", Section V:

"The Board shall not certify any employee organization as the exclusive representative of a bargaining unit without an election being held pursuant to this section."

Despite the fact that MEA detailed an election held in 1970, prior to the establishment of this Board, PELRB decided that a request for modification of the unit was in order, but that a petition to modify the certification of the current joint unit was not proper. After objections from the parties on the petitions, PELRB scheduled a June 27, 1985 date to hear arguments on the question of whether or not the petitioned creation of a new unit should be allowed, with MEA vying for certification given the possibility that they would ultimately represent both teachers and principals before the School Committee.

HEARING OF JUNE 27, 1985

At the hearing extensive testimony and exhibits were introduced which established the following facts:

1. MEA is currently the exclusive representative for the non-supervisory employees, as well as for supervisory employees covered by the master agreement by and between the Public Employer and the Association relative to Article I, Recognition, Section A of the current 1983-85 Master Agreement.

2. Testimony received from "expert" witnesses on the development of RSA 273-A was presented alleging that the issue of supposed conflict of interest in one union representing two different types of employees had not been considered at the time the Act was passed. At the time there were firefighters and supervisors in the same union with no discernable problems. Staff Attorney for the State Employees Association testified that while there was a question of a difference of opinion over the right of supervisory employees to bargain at all, there was no question as to the right of the Association to represent all of the classified employees, supervisory and non-supervisory, and that this practice had been carried on since 1941. At least since the 1975 enactment of the law by the Legislature, there had been no problems in representing both types of employees by the SEA on the state level.

3. Extensive testimony was presented to show that the Association represents the person filing the grievance whether that person is a rank and file employee or a supervisory employee and that they do not seek to represent the supervisory or management side.

4. Principal John White testified that there were no problems in administering the contract even though MEA represented both the principals and the rank and file teachers, given the fact that the Superintendent's office was intimately involved in all important decisions with respect to transfers, dismissals, leaves, layoffs, hirings, etc., matters usually the subject of grievances. Similar testimony was received from Elementary School Principal, Robert Duclos.

5. Extensive testimony was presented through MEA's Executive Director, Thomas Adams about the process involved in settling of grievances, most of which took place in the Superintendent's office. Mr. Adams did not recognize a conflict of interest in representing both teachers and principals with separate bargaining teams in separate units, nor did he recognize any such conflict in the past when both groups had been in the same unit.

The hearing was continued to July 9, 1985.

CONTINUATION TO JULY 9, 1985

During testimony and cross-examination of Mr. Adams, it was evident that he was of the opinion that if principals were dissatisfied with any particular amount of "flexibility" they possessed in their ability to assign teachers to different duties, etc., they would appeal to the Superintendent for a change in either policy or contract, or both.

During the testimony from witness Adams, Counsel for the Committee made it clear on the record that there were many articles in places in the contract where a teacher might conceivably bring a grievance against one of the principals. Adams continued to insist that if MEA represented both teachers and principals, they would be required to represent the grievant; and, should a situation arise where MEA was required to represent both the teacher and the principal in the same grievance issue, they would undoubtedly assign someone other than the Director to represent one of the two parties. He added that the situation had never happened in the past. No witness could point to any actual occurrence in which an actual conflict had arisen.

Additional witnesses testified that they could see some potential or theoretical conflict of interest should MEA represent both principals and teachers and they felt that it could present a division of loyalties.

FINDINGS OF FACT

PELRB finds that it has previously certified separate bargaining units of supervisors and rank and file employees who are represented by the same labor organizations; e.g., Firefighters in the City of Manchester under the International Association of Fire Fighters, and the Classified and Supervisors in State Service under the State Employees Association. In both cases, the same labor organization represents both supervisory and rank and file employees of the same public employer.

At the time of the enactment of RSA 273-A, August 1975, the State Employees Association represented both rank and file employees and supervisory employees of the State of New Hampshire. The legislature must have been aware of the fact that the State Employees Association represented both groups of employees at the time and chose not to prohibit such representation, leaving to the employees the right to select the representative of their own choice.

RULINGS OF LAW

We find that the legislature intended only to require separate bargaining units for supervisors and contemplated no restrictions upon the identity of the labor organization representing supervisory employees.

RSA 273-A:8, II does not require that supervisory employees be represented by a labor organization different from the organization representing rank and file employees, but instead requires only that the employees comprising negotiating teams for each bargaining unit be from their respective bargaining units.

Members of labor organizations have a right to select their representatives for bargaining from whichever organization they desire. Members of different units whether they be supervisory or non-supervisory may have perfectly valid reasons for the selection of the unit representatives they choose. It is not the function of this Board to "second guess" the choices expressed in a secret ballot election by employees of any rank. Likewise, it is clearly not the

responsibility of management to question such a decision as a matter of law.

This Board has never assumed jurisdiction over questions of fair representation of unit members by the exclusive representative, even in cases of actual claims of a failure of fair representation. We will not entertain such an argument made by management and not by affected employees in this case because:

1. History demonstrates the absence of any actual problems in the very unit(s) involved for at least 15 years of common representation.
2. The argument presumes that the principals will elect MEA to represent them and no election has taken place.
3. The employees have had and will have ample opportunity to consider the "conflict of interest" issue in the election process and can make an educated choice of their own as to whether they desire to be represented by the MEA under all the circumstances. This right is paramount and will not be abrogated by this Board because of theoretical objections.
4. There is no evidence that a labor organization, faced with an actual conflict situation, is unable to arrange adequate representation of both parties through use of independent counsel. Such situations are handled fairly and routinely by law firms and the State in similar cases of conflict and arise for unions when more than one member has a grievance and the grievances are in conflict.

The parties at the hearing and thereafter submitted requests for findings of fact and rulings of law. Consistent with the decision herein and the reasoning set forth, the Board makes the following rulings. In the event of alleged inconsistency, the specific holdings of this decision as enunciated above control.

On the requests of the Manchester Education Association, the Board grants all requests except for request number 9 which is granted with the notation that the authority set forth therein is exercised in large part by the superintendent's office but not entirely.

On the requests submitted by the Manchester Board of School Committee, the Board makes the following findings:

The Board grants requests numbered 1, 2, 4, 6, 7, 8, 9, 11 and 13. Requests numbered 17, 18, 23, 24, 25, 26, 27, 30, 33 are denied.

Other requests of the Manchester Board of School Committee are granted or denied as follows:

Request number 3 is denied and by way of further finding the Board finds that the common representation has existed for over 15 years and exists in other units in the state with no demonstrated inability or problems for proper representation and management of the bargaining units or representation of their members.

Request number 5 is denied and by way of further finding the Board states that the mere representation of two units by one labor organization does not create an inherent conflict of interest.

Request number 10 is granted to the extent that petitioner is the current exclusive representative for nonsupervisory positions, may become the representative

for supervisory positions and will have a duty of fair representation as to both bargaining units. It is denied as to the exercise "without any actual or potential conflicts of interest and/or division of loyalties" since such potential is inherent in the representation of any bargaining unit or series of bargaining units. Again, no actual problems have been demonstrated.

Request 12 is denied since it contains great speculation concerning conflicts which are not supported in practice.

Request 14 is denied since the characterization of positions as "contrary to each other" is not established. It is true that the Manchester Education Association, if selected by the supervisors, would have a representation duty for employees in both units and would have to appropriately resolve that duty in the event of actual conflicts as discussed earlier in this decision.

Request number 15 is denied because there is no demonstration of actual situations in which representation is needed by both sides in a grievance procedure and, further, is denied because other means are available to ensure representation of multiple parties in the event of problems.

Request 16 is denied since it is the grievant who is represented in the grievance procedure and not the management person against whom the grievance is filed.

Request 17A is denied since no such problems have been brought to the Board's attention or established by the evidence.

Request 19 is denied as stated since it suggests a conflict is stated in the master agreement. It is true that supervisors and non-supervisors have different roles.

Request 20 is denied since it was not established and is irrelevant to the complaint.

Request 21 is denied since it is speculative and not relevant.

Request 22 is denied since it requests speculation as to problems and ignores the possible alternate resolution mechanisms available to the union in carrying out its obligations.

Request 23 is denied as not established for the reasons set forth above.

Request 25 is denied since the same situation exists for all personnel who are represented and is not established as violating the requirements of the statute.

Request 27 is denied since it is true of all employees, presumes violation of the statutory prohibition against job actions and is speculative.

Request 28 is granted to the extent of the statement of holdings in the cases cited but is irrelevant since it is not directly applicable to the case before the Board.

Request 29 is a correct statement of the cited provisions but is irrelevant to the case before the Board.

Request 31 is denied and the Board would further note that the National Labor Relations Act section is irrelevant to this case.

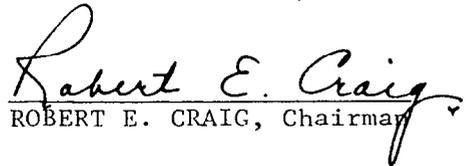
Request 32 is neither admitted or denied since the purpose of the Congress in enacting the National Labor Relations Act is irrelevant to the case before the Board.

DECISION AND ORDER

For all the above stated reasons the objections of the Committee are not persuasive and the Board issues the following order:

1. The petition for modification of the existing unit in the City of Manchester School System is granted.

2. The MEA shall remain certified as the representative of the teachers. An election shall be held as expeditiously as possible, after the 15-day intervening period, in the unit of principals to determine their choice of representation in accordance with the statute and rules.


ROBERT E. CRAIG, Chairman

Signed this 1st day of November, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members James C. Anderson, Seymour Osman and Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.



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RULINGS OF LAW

We find that the legislature intended only to require separate bargaining units for supervisors and contemplated no restrictions upon the identity of the labor organization representing supervisory employees.

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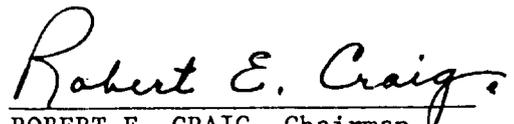
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ROBERT E. CRAIG, Chairman

Signed this 27th day of August, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members James C. Anderson, Seymour Osman and Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.